

Rural Utilities Service, USDA

§ 1779.85

as a deduction from the principal balance of the loan.

§ 1779.82 [Reserved]

§ 1779.83 Protective advances.

Protective advances can only be added to the loan account for purposes of requirements to preserve the value of the security. Protective advances constitute an indebtedness of the borrower to the lender and must be secured by collateral to the same extent as principal and interest. Protective advances include, but are not limited to, advances made for taxes, annual assessments, ground rent, hazard and flood insurance premiums affecting the collateral (including any other expenses necessary to protect the collateral). Attorney fees are not a protective advance.

(a) *Agency approval.* The Agency must approve, in writing, all protective advances on loans within its loan approval authority which exceed a total cumulative advance amount of \$5,000 to the same borrower. Protective advances must be reasonable when associated with the value of the collateral being preserved.

(b) *Preserving collateral.* When considering protective advances, sound judgment must be exercised in determining that the additional funds advanced will actually preserve collateral and recovery is actually enhanced by making the advance.

§ 1779.84 Additional loans or advances.

The lender will not make additional expenditures or new loans to the borrower without first obtaining the written approval of the Agency even though such expenditures or loans will not be guaranteed.

§ 1779.85 Bankruptcy.

(a) *Calculating losses.* Report of Loss form (available in any Agency office) will be used for calculating estimated and final loss determinations.

(b) *Lender responsibility.* The lender is responsible for protecting the guaranteed loan debt and all the collateral securing it in bankruptcy proceedings. These responsibilities include, but are not limited to, the following:

(1) Filing a proof of claim, where necessary, and all necessary papers and pleadings;

(2) Attending and, where necessary, participating in meetings of the creditors and all court proceedings;

(3) Immediately seeking adequate protection of the collateral if it is subject to being used by the trustee in bankruptcy or the debtor in possession;

(4) Where appropriate, seeking involuntary conversion of a pending chapter 11 case to a liquidation proceeding or seeking dismissal of the proceedings; and

(5) Keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings.

(c) *Appraisals.* In a chapter 9 or chapter 11 reorganization, the lender must obtain an independent appraisal of the collateral if the Agency believes an independent appraisal is necessary. The Agency and the lender will share the appraisal fee equally.

(d) *Liquidation expenses.* Only expenses authorized by the court of chapter 9 plans or chapter 11 reorganizations, or chapters 11 or 7 liquidation (unless the liquidation is by the lender), may be deducted from the collateral proceeds.

(e) *Repurchase from the holder.* The Agency or the lender, with the approval of the Agency, may initiate the repurchase of the unpaid guaranteed portion of the loan from the holder. If the lender is the holder, an estimated loss payment may be filed at the initiation of a chapter 7 proceeding or after a chapter 9 or chapter 11 proceeding becomes a liquidation proceeding. Any loss payment on loans in bankruptcy must be approved by the Agency.

(f) *Chapter 11 bankruptcy.* If a borrower has filed for protection under chapters 9 or 11 of the United States Code for a reorganization (but not chapter 13) and all or a portion of the debt has been discharged, the lender may request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. If the court approves revisions to the chapter 9 plan or chapter 11 reorganization plan, subsequent estimated loss payments may be requested in accordance with the

court approved changes. Once the reorganization plan has been satisfactorily completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court ordered interest-rate reduction under the terms of the reorganization plan.

(g) *Agency approval of estimated liquidation expenses.* The Agency must approve, in advance and in writing, the lender's estimated liquidation expenses of collateral in a liquidation if the liquidation is performed by the lender. These expenses must be reasonable and customary and not include in-house expenses of the lender.

(h) *Reconciliation.* In the event that the estimated loss payment exceeds the actual loss, the lender will reimburse the Agency the amount in excess of the actual loss plus interest at the note rate from the date of the estimated loss payment.

§§ 1779.86–1779.87 [Reserved]

§ 1779.88 Transfers and assumptions.

(a) *General.* For all transfers and assumptions, the lender must concur in the plans for disposition of funds in the transferor's debt service, reserve, and operation and maintenance account. The Agency will approve, in writing, transfers and assumptions of loans to transferees who will continue the original purpose of the guaranteed loan subject to the following applicable provisions:

(1) When the transaction is to a member of the borrower's organization, it will be at an amount which will not result in a loss to the lender.

(2) Transfers to eligible borrowers will receive preference if recovery to the lender from the sale price is not less than it would be if the transfer was to an ineligible borrower.

(3) The present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan, and the transfer will be to the lender's and Agency's advantage.

(4) The transferee will assume an amount at least equal to either the

present market value or the debt, whichever is less.

(b) *Transfers to an eligible borrower.* (1) The total indebtedness may be transferred to an eligible borrower on the same terms.

(2) The total indebtedness may be transferred to another eligible borrower on different terms not to exceed those terms for which an initial guaranteed loan can be made.

(3) Less than the total indebtedness may be transferred to another eligible borrower on the same or different terms and the pro rata share of any eligible loss paid to the lender.

(4) A guaranteed loan for which the transferee is eligible may be made in connection with a transfer subject to the policies and procedures governing the type of loan being made.

(5) If the transferor is to receive a payment for the equity, the total debt must be assumed.

(c) *Ineligible borrower.* Transfers to ineligible borrowers are considered only when needed as a method for servicing problem cases when an eligible transferee is not available. Transfers should not be considered as a means by which members can obtain equity or as a method of providing a source of easy credit for purchasers. Transfers must meet the following requirements:

(1) All transfers to ineligible borrowers will include a one-time non-refundable transfer fee to the Agency of no more than 1 percent. Transfer fees will be collected, and payments applied, in accordance with paragraph (d) of this section.

(2) For all loans covered by this part, the Agency may approve a transfer of indebtedness to, and assumption of, a loan by a transferee who does not meet the eligibility requirements for the kind of loan being assumed when the ineligible borrower will:

(i) Make a significant down payment, and

(ii) Agree to pay the remaining balance within not more than 15 years. Installments will be at least equal to the amount amortized over a period not greater than the remaining life of the debt being transferred, and the balance will be due the fifteenth year.

(3) Interest rates to ineligible transferees will be the rate specified in the